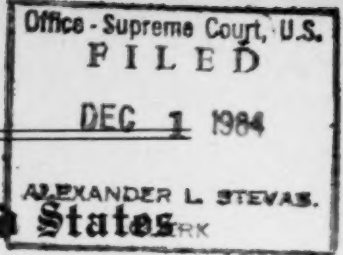


(2)  
No. 84-672



IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1984

ISLAMIC REPUBLIC OF IRAN,  
*Petitioner,*

v.

MOHAMMED REZA PAHLAVI and  
FARAH DIBA PAHLAVI,  
*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
COURT OF APPEALS OF THE STATE OF NEW YORK

**RESPONDENT'S BRIEF IN OPPOSITION**

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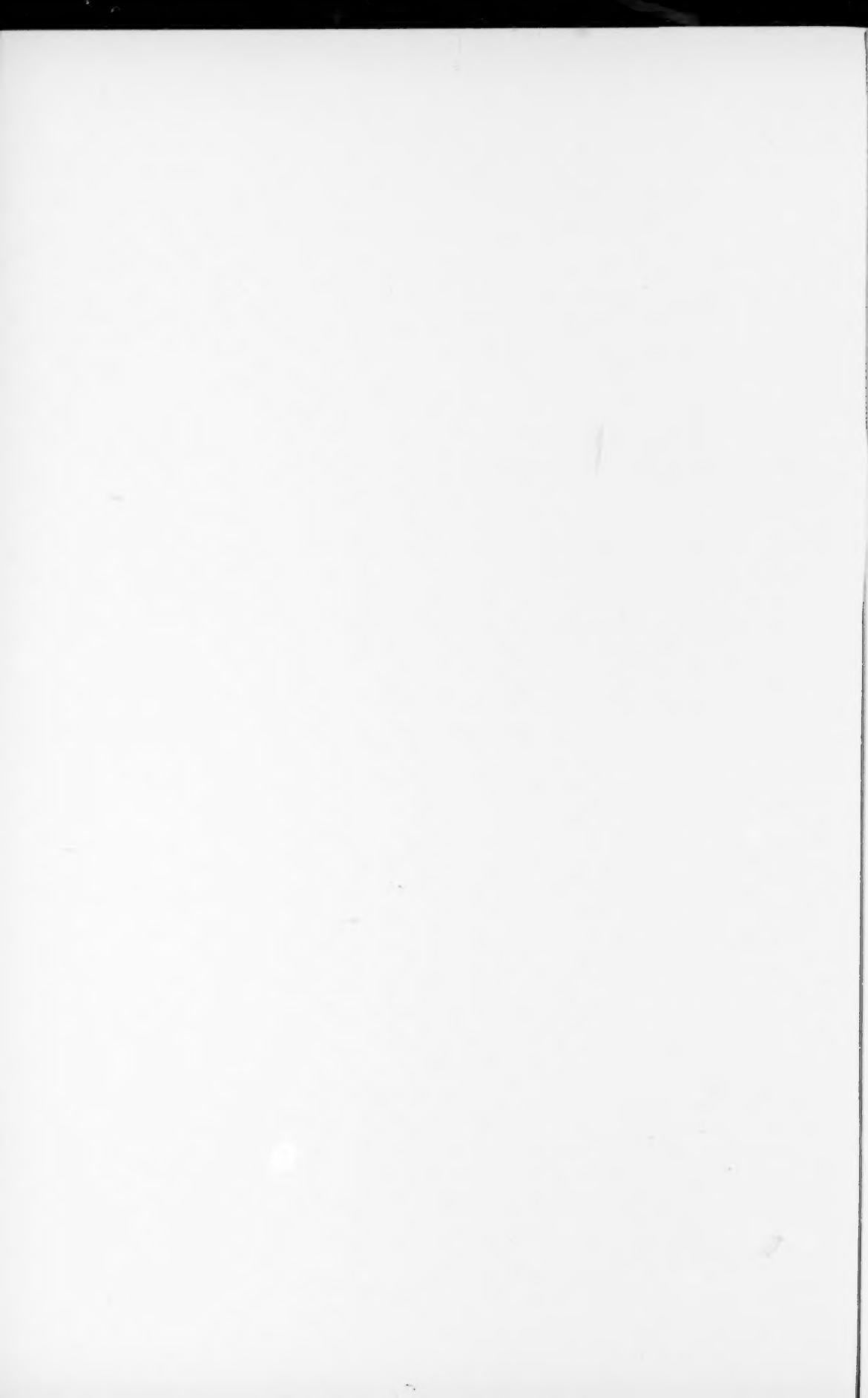
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## QUESTIONS PRESENTED

1. Are the questions sought to be raised of general importance and likely to recur?
2. Does the Court have jurisdiction to consider the due process question?
3. Do the Algerian Accords guarantee Iran immunity from the requirements regularly imposed by state courts on all other plaintiffs, including the doctrines of *forum non conveniens*, non-justiciable political question, and unclean hands?
4. In the circumstances of this case, does the Due Process Clause of the Fourteenth Amendment prohibit a state court from dismissing, on *forum non conveniens* grounds, an action involving foreign parties, facts, and law and having no nexus with the state, regardless of the existence of an alternative forum?



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---

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
COURT OF APPEALS OF THE STATE OF NEW YORK

---

**RESPONDENT'S BRIEF IN OPPOSITION**

---

This brief is submitted by respondent Farah Diba Pahlavi, the Empress of Iran ("the Empress"), in opposition to the petition of the Islamic Republic of Iran ("Iran") for a writ of certiorari to the Court of Appeals of the State of New York. The Empress's husband Mohammed Reza Pahlavi, the late Shah of Iran ("the Shah"), though named as a respondent, is not before this Court, since no representative was substituted for him in this action following his death a few months after the action was commenced.

**OPINIONS BELOW**

The opinions below are reported as follows: *Islamic Republic of Iran v. Mohammed Reza Pahlavi and Farah Diba Pahlavi*, N.Y.L.J., Sept. 16, 1981, at 6, col. 3 (N.Y. Sup. Ct., N.Y. County 1981), *aff'd*, 94 A.D.2d 374, 464 N.Y.S.2d 487 (1st Dep't 1983), *aff'd*, 62 N.Y.2d 474, 467 N.E.2d 245, 478 N.Y.S.2d 597 (1984). All citations in this brief will be to the opinions as reproduced in Petitioner's

Appendix ("Pet. App.") at 39-74, 18-38, and 1-17 respectively.

### JURISDICTION

Although petitioner seeks to invoke the jurisdiction of this Court, in part, "to review a question arising under . . . Amendment XIV of the United States Constitution in a judgment rendered by the New York Court of Appeals," Petition for a Writ of Certiorari ("Pet.") 2, the due process question raised in the petition was neither presented to nor decided by the court below, and is therefore not within the jurisdiction of this Court.

### STATEMENT OF THE CASE

This action arises out of the Iranian revolution of 1979. The Shah and the Empress left Iran in January of that year, in June took up permanent residence in Mexico, and in late October entered the United States on temporary visas so that the Shah could obtain specialized medical care in New York. On November 4, the American hostages and Embassy were seized in Tehran, and the United States was asked to turn over the Shah and his alleged property here as ransom. To back up the demand for the Shah's property, the revolutionary government of Iran commenced this action against the Shah and the Empress by substituted service of process in New York in late November.

The complaint alleges that during the Shah's 38-year reign he was merely the "*defacto*" ruler of Iran governing through "assumed power," and that, aided and abetted by his wife, he profited personally from his position as the nation's monarch in violation of the Iranian Constitution. Iran prays for the impressing of a trust on all assets in which the defendants have an interest anywhere in the world, an accounting, a permanent injunction, and damages in the amount of 56 billion 500 million dollars.

In early 1980, the defendants moved to dismiss the complaint. That motion was pending when, on July 27 of that year, the Shah died, and was still pending in September, when the United States filed a suggestion of interest requesting that all proceedings in the case be stayed until further notice.

The hostage crisis was finally resolved with the initialing of the "Algerian Accords" (Pet. App. at 75-84) on

January 19, 1981, and the release of the hostages on January 20. In February the United States filed a further statement of interest in this action, calling the court's attention to that part of the Accords providing that claims by Iran against the Shah and his family "should not be considered legally barred either by sovereign immunity principles or by the act of state doctrine" (Pet. App. at 80), and withdrawing the United States request for a stay. Since no representative was ever substituted for the Shah in this action, the only defendant who has appeared in this case since its resumption in February of 1981 is the Empress.

In the New York courts the Empress argued that this case should be dismissed on the grounds that it involves non-justiciable political questions, that it is barred by Iran's unclean hands, and that jurisdiction should be declined on the basis of the New York doctrine of *forum non conveniens*, which lays particular emphasis on the state's interest in conserving its judicial resources by discouraging the maintenance in its courts of litigation having no substantial nexus with the state. At no time did the Empress seek relief either on principles of sovereign immunity or on the act of state doctrine.

Contesting all of the grounds advanced by the Empress, Iran argued that the doctrine of *forum non conveniens* is unavailable in the absence of an alternative forum where the litigation may be maintained. However, nothing in the record before the New York Court of Appeals raised the question, now posed in the petition, whether dismissal of this action on the ground of *forum non conveniens* without a finding that an alternative forum exists violates due process; nor was such a question raised in Iran's briefs to that court. Although Iran had not made any suggestion in the lower courts that the Algerian Accords guarantee Iran an American forum for this litigation, it did raise that argument in the Court of Appeals.

On September 14, 1981, the New York Supreme Court, Special Term, granted the motion to dismiss on the ground of *forum non conveniens*, finding that the action has "no nexus with this state." Pet. App. at 70.

On appeal, the Appellate Division affirmed the dismissal by a vote of 4 to 1. Pet. App. at 18-38. The court's opinion

stressed the political nature of the issues raised by the complaint (*id.* at 19-20) and Iran's failure to provide a system of impartial courts so that this action might be tried in the place with all the relevant contacts (*id.* at 21-22). The concurring opinion likewise stressed political and equitable considerations. *Id.* at 26 & n.5.

On July 5, 1984, the New York Court of Appeals affirmed by a vote of 5 to 1. Pet. App. at 1-17. The court held that the existence of an alternative forum is not an invariable precondition to application of the doctrine of *forum non conveniens* under New York law (*id.* at 8), and noted that in any event Iran had not shown definitely that no such forum exists in this case (*id.* at 7). Like the Appellate Division before it, the Court of Appeals relied in part on Iran's own failure to provide a suitable forum for this litigation (*id.* at 6) and upon the political nature of the case (*id.* at 7). Unlike the courts below it, however—and unprompted by anything in the record or the briefs—the Court of Appeals did mention due process in passing, but only to note that it was not an issue:

At the threshold we note that the Supreme Court, while ruling with respect to procedural rights in the Federal courts, has never suggested that the doctrine of *forum non conveniens* implicates constitutional due process rights.

*Id.* The court concluded with a thorough treatment of the new issue in the case—the effect of the Algerian Accords. *Id.* at 8-11. It held that the Algerian Accords do not preclude dismissal of this action.

## REASONS FOR DENIAL OF THE WRIT

### Summary of Argument

1. There are no special or important reasons for review by this Court. The purported issues are of consequence only to Iran and the Shah's family and relate to unique facts not likely to arise again.

2. The question sought to be raised under the Due Process Clause of the Fourteenth Amendment was not raised by Iran in the court below and therefore was not preserved for review by this Court.

3. The question sought to be raised under the Algerian Accords is plainly without merit. The Accords subject Iran, like any other litigant in American courts, to all principles of law normally applied by those courts, with the sole exception of the doctrines of sovereign immunity and act of state, neither of which was a basis for the decisions below.

4. Even if the due process question had been preserved, the decision below constitutes a valid exercise of the inherent powers of state courts to control their own dockets by dismissing on *forum non conveniens* grounds an action having no nexus with the state, particularly since the foreign-government plaintiff failed to prove the non-existence of an alternative forum, and was itself responsible for the unavailability of a forum having significant contacts with the action. The decision is also supported by other state law grounds (non-justiciable political question, unclean hands), and raises no due process question warranting review.

### Argument

#### I

#### **THE QUESTIONS SOUGHT TO BE RAISED ARE NOT OF GENERAL IMPORTANCE, ARE UNLIKELY TO RECUR, AND DO NOT WARRANT REVIEW**

The circumstances of this action are unique. The action was brought by the present government of Iran *in personam* against the former Shah and Empress seeking, on the basis of alleged wrongdoing in Iran contrary to the Iranian Constitution, equitable remedies respecting alleged assets wherever located throughout the world.

As the courts below noted, the case presented issues of great complexity having no nexus with New York, including ascertainment of the power of the Shah under the law of Iran. Pet. App. at 6-7, 19-20. And while the Court of Appeals affirmed dismissal on *forum non conveniens* grounds, it recognized that other familiar doctrines—non-justiciable political question and unclean hands—led to the same result. Cases of such nature must be rare indeed.

In addition, the questions sought to be raised by Iran make this case even more unusual, unlikely to recur, and of no relevance to litigants generally. The provisions of the Algerian Accords apply only to the present government of Iran

and the late Shah and close relatives served in suits by Iran seeking alleged assets. Pet. App. at 79-80. No one else is affected by, or has standing to litigate, questions as to those provisions. And as regards the due process issue, state courts are not likely to encounter with any frequency actions by foreign governments who choose not to sue in their own courts because the judgments of those courts would not be recognized by the civilized world.

## II

### THE COURT IS WITHOUT JURISDICTION TO REVIEW THE DUE PROCESS QUESTION

The petition seeks to raise a question whether, under the circumstances of this case, dismissal on the ground of *forum non conveniens* violates principles of due process. Pet. i. The absence from Iran's statement of the case (*id.* 4-12) of any facts showing that this question was "timely and properly raised" below, as required and in the manner specified by this Court's Rule 21.1(h), is due to the fact that this issue was not "raised, preserved, or passed upon in the state courts below." *Cardinale v. Louisiana*, 394 U.S. 437, 438 (1969).

Neither the record nor the briefs before the New York Court of Appeals contained any reference at all to such a question. That court's spontaneous observation, in passing, that this Court "has never suggested that the doctrine of *forum non conveniens* implicates constitutional due process rights," Pet. App. at 7, serves only to establish that the court did not regard due process as an issue to be examined. Since the due process question was neither pressed nor passed upon below, this Court lacks jurisdiction to consider it. *Webb v. Webb*, 451 U.S. 493 (1981).

## III

### THE ALGERIAN ACCORDS DO NOT PREVENT DISMISSAL ON GROUNDS OTHER THAN SOVEREIGN IMMUNITY AND ACT OF STATE

Iran contends, as it did for the first time in the Court of Appeals, that dismissal of this action on the ground of *forum non conveniens* violated "express provisions of the Algerian Accords in which the U.S. pledged to assure Iran of the availability of U.S. forum for the litigation of its claims against the former royal family." Pet. 18. But there is no such

provision in the Accords, and in the trial court Iran conceded that the Accords "do not purport to guarantee Iran this forum for adjudication of its claims." Memorandum in Further Opposition to Defendants' Motion to Dismiss, at 5.

In the portion of the Accords applicable to this case the United States promised only to inform the courts that

the claims of Iran should not be considered legally barred either by sovereign immunity principles or by the act of state doctrine . . . .

"General Declaration" ¶ 14, Pet. App. at 80. But neither sovereign immunity nor the act of state doctrine was a basis of the decisions below.

The issues before the New York state courts concerned the doctrines of unclean hands, non-justiciable political question, and *forum non conveniens*. Nothing in the Algerian Accords purports in any way to prohibit the courts of New York from applying New York law to those issues in this case as in any other case.

The negotiating history of the Accords confirms what is apparent on their face—that they were intended to permit dismissal of this action on the ground of *forum non conveniens*. Because the United States requested that this case be stayed pending resolution of the Iranian hostage crisis, the motion to dismiss, originally served on Iran in January of 1980, remained pending during the entire time that the Algerian Accords were being negotiated. Since both the United States and Iran had appeared in this case, both were fully aware, as they negotiated the Accords, that the pending motion to dismiss was not based on grounds of sovereign immunity or act of state, but on other grounds, including *forum non conveniens*.

It is therefore significant that in November of 1980, when Iran demanded that "[t]he properties of the deceased Shah . . . be returned" as ransom for the hostages (Pet. 22), the United States Government's counter-proposal was specifically limited to an offer to inform American courts that Iran's claims should not be considered legally barred "either by principles of sovereign immunity or the act of state doctrine." First American Response (Nov. 1980), reprinted in A. Lowenfeld, *Trade Controls for Political Ends* at DS-811 (2d ed. 1983).

In December the United States, referring specifically to this case, repeated its prior position (Pet. 23), which was drawn so as to discourage dismissal on grounds not raised by the pending motion (sovereign immunity and act of state doctrine), but to permit dismissal on the grounds actually raised (such as *forum non conveniens*). This position was accepted by Iran, with full knowledge of the grounds of the pending motion to dismiss, and was embodied in the Accords. Pet. App. at 80.

Thus, there is no basis whatever for Iran's argument that the plain and carefully limited language of the Accords should be ignored and an American pledge "to assure Iran of the availability of [a] U.S. forum" read into them.

The only other court which has considered this question, as far as we are aware, has rejected Iran's position. In *Islamic Republic of Iran v. Shams Pahlavi*, 160 Cal. App. 3d 620, 206 Cal. Rptr. 752, 754-55 (2d Dist. 1984), the court, in affirming an order setting aside service of summons by publication for failure to comply with requirements of California law, observed:

The Algerian Accords carry no language with respect to the affirmative duties of American state courts as to litigation about Iranian assets. . . . Succinctly put, each litigant before our courts may be expected to comply with the same standards required of any other litigant. . . . We hold that there is no special category of Iranian litigant.

#### IV

#### THE DISMISSAL OF THE ACTION RAISES NO DUE PROCESS ISSUE WARRANTING REVIEW

- A. The authorities relied on do not support the claimed right to a trial on the merits of claims by foreign sovereigns against foreigners under foreign law**

Even if the due process question were properly before the Court, the question is insubstantial and not appropriate for review. Simply put, Iran's position is that it is entitled, as a matter of constitutional right, not only to access to American courts—which it has had in full measure—but also to a trial on the merits. It thus seeks constitutional protections beyond

those granted to American citizens. The cases relied on do not support such an expansive interpretation.

The Due Process Clause does not guarantee a hearing on the merits in an American judicial forum even to American citizens seeking relief under American law. Iran relies on *Boddie v. Connecticut*, 401 U.S. 371 (1971)—a narrowly-worded opinion holding that indigent applicants for divorce may not be barred from the courts for inability to pay filing fees. The Court in *Boddie* recognized that the Due Process Clause typically is invoked to protect the rights of defendants haled into court and forced to settle their claims there, “not, as here, persons seeking access to the judicial process in the first instance.” *Id.* at 375. This Court has repeatedly held that *Boddie* must be confined to situations of a state-created judicial monopoly on adjustment of constitutionally-protected interests. *United States v. Kras*, 409 U.S. 434 (1973) (no due process right of access to federal court to seek discharge in bankruptcy); *Ortwein v. Schwab*, 410 U.S. 656 (1973) (no due process right of access to state court to seek review of agency determination reducing welfare payments).

The Khomeini regime’s desire for compensation for alleged violations of Iranian law by Iran’s former rulers is not a matter over which New York courts have a monopoly, and does not involve interests protected by the United States Constitution. Accordingly, that regime has no due process right to litigate its claims on the merits in New York.

Iran concedes that it has found only one opinion, in either a state or federal court, suggesting that due process considerations preclude dismissal on the ground of *forum non conveniens* in the absence of a suitable alternative forum. Pet. 49-50, citing *Farmanfarmaian v. Gulf Oil Corp.*, 437 F. Supp. 910, 915 (S.D.N.Y. 1977), *aff’d*, 588 F. 2d 880 (2d Cir. 1978). The district court in that case dismissed, on the ground of *forum non conveniens*, an action brought by an Iranian citizen against American corporations on claims arising in Iran under Iranian law. The court found that the judicial system in pre-revolutionary Iran was a suitable alternative forum for the action. 437 F. Supp. at 928. When that court made the off-hand remark about due process cited in the petition, it was not confronted with a case where the plaintiff’s own actions had rendered that forum unsuitable.

Iran argues that it is a "person" entitled to the full protection of the Due Process Clause because foreign states otherwise entitled to sue in our courts have been held to be "persons" as defined in the Clayton Act. Pet. 56. But this Court's holding in *Pfizer Inc. v. Government of India*, 434 U.S. 308, 320 (1978), was based upon analysis of the history and purpose of the Clayton Act, and did not involve any consideration of the Due Process Clause.

The primary case relied upon by Iran for its due process argument, *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982), involved termination of "potentially meritorious claims in a random manner" by a state agency's failure to give a timely response to a complaint under state antidiscrimination laws. *Id.* at 437 n.10; Pet. 53. That case has no applicability here, where three successive New York courts, far from acting capriciously or randomly, have carefully weighed and balanced all possible public and private interests before dismissing the action, and in particular have taken into account the fact that Iran is itself directly responsible for the absence of a suitable forum for its suit. Pet. App. at 6 ("If the action cannot be maintained in Iran . . . then that failure must be charged to plaintiff"); *id.* at 21-22 ("It is a fundamental obligation of every civilized government to provide a system of impartial courts").

**B. The Due Process Clause does not require state courts to entertain actions that they find inappropriate or improper, whether or not an alternative forum exists**

Iran argues that New York courts, in applying the New York doctrine of *forum non conveniens*, are bound by certain language in this Court's opinions in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947), and *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981). Pet. 42-48. But the *Piper Aircraft* case did not concern New York at all; and to the extent, if any, that this Court may have been attempting to describe New York doctrine in the 1947 *Gilbert* case (330 U.S. at 509), its decision must yield to the most recent statement of that doctrine by New York's highest court.

The states necessarily have broad discretion in the allocation of their own judicial resources, and *forum non conveniens* is but one of many doctrines whereby state courts, for

reasons of policy, may decline to exercise jurisdiction. Examples of circumstances where plaintiffs may be turned away without regard to whether an alternative forum exists include cases barred by equitable considerations (such as unclean hands, obtaining service of process by fraud or duress, or parental kidnapping in a child custody dispute—see, e.g., N.Y. Dom. Rel. Law § 75-i (McKinney Supp. 1983)); cases where the defendant was served while in the state to participate in another proceeding, or is subject to diplomatic immunity; cases where the plaintiff seeks an advisory opinion or resolution of a political question; cases brought by collusion or where the plaintiff lacks standing; and cases in which the applicable foreign law calls for a remedy of a type unknown to local law, or is penal in nature, or is contrary to the public policy of the forum state (see Restatement (Second) of Conflict of Laws § 85 & comment a, § 89, § 90 (1971)).

As a crossroads of the world and a magnet for litigation, New York has always had a strong policy favoring dismissal of actions having little or no nexus with the state. See, e.g., *Ferguson v. Neilson*, 11 N.Y.S. 524, 524 (Sup. Ct., Gen. Term, 1st Dep't 1890) (actions between parties residing in another state for personal injuries received in that state will be dismissed "unless special reasons are shown" for exercising jurisdiction); *Silver v. Great American Insurance Co.*, 29 N.Y.2d 356, 362, 278 N.E.2d 619, 622, 328 N.Y.S.2d 398, 403 (1972) (growth of long-arm jurisdiction calls for "a greater degree of forbearance in accepting suits which have but minimal contact with New York"); N.Y. Bus. Corp. Law § 1314(b) (McKinney Supp. 1983) (prohibiting suits by non-residents against foreign corporations in New York absent some nexus with the state).

This lawsuit is exactly the kind of case to which New York's established policy was properly applied.

**C. In addition to *forum non conveniens*, the decision below was supported by alternative state law grounds (non-judicial political question and unclean hands)**

Two particular factors considered by the appellate courts below in connection with their *forum non conveniens* analysis are significant.

The first—in the nature of unclean hands—is that the unsuitability of Iran as a forum for this litigation is entirely due to Iran's own culpable conduct in creating a system of "justice" so lacking in even any minimal concept of due process that the civilized world would never enforce its judgments:

If the action cannot be maintained in Iran . . . under laws which result in judgments cognizable in the United States or other foreign jurisdictions where the Shah's assets may be found, then that failure must be charged to plaintiff. . . . Any infirmity in plaintiff's legal system should weigh against its claim of venue, not impose disadvantage on defendant or the judicial system of this State.

Pet. App. at 6. See also *id.* at 21-22, 26 (Appellate Division opinions).

The second factor is the essentially political nature of this action, in which the present regime in Iran seeks review of the conduct of the former ruler:

Despite the fact that plaintiff's complaint requests monetary relief, it really seeks a sweeping review of the political and financial management of the Iranian government during the several years of the late Shah's reign . . . .

Pet. App. at 7. See also *id.* at 19-20 (Appellate Division opinion).

Thus, in reaching their conclusion with respect to the issue of *forum non conveniens* the appellate courts below also decided, adversely to Iran, the issues of unclean hands and political question—each of which constitutes a fully sufficient independent ground for dismissal. Viewed from any perspective, this action was ill-conceived and inappropriate for resolution in a court of New York.

**CONCLUSION**

The petition for certiorari should be denied.

Respectfully submitted,

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November 28, 1984



## **APPENDIX**

### **NEW YORK STATUTES CITED**

#### **New York Domestic Relations Law:**

##### **§ 75-i. Jurisdiction declined because of conduct**

1. If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct the court may decline to exercise jurisdiction if this is just and proper under the circumstances.

2. Unless required in the interest of the child, the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

3. In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses.

#### **New York Business Corporation Law:**

##### **§ 1314. Actions or special proceedings against foreign corporations**

(a) An action or special proceeding against a foreign corporation may be maintained by a resident of this state or by a domestic corporation of any type or kind for any cause of action.

(b) Except as otherwise provided in this article, an action or special proceeding against a foreign corporation may be maintained by another foreign corporation of any type or kind or by a non-resident in the following cases only:

(1) Where it is brought to recover damages for the breach of a contract made or to be performed within this state, or relating to property situated

within this state at the time of the making of the contract.

(2) Where the subject matter of the litigation is situated within this state.

(3) Where the cause of action arose within this state, except where the object of the action or special proceeding is to affect the title of real property situated outside this state.

(4) Where, in any case not included in the preceding subparagraphs, a non-domiciliary would be subject to the personal jurisdiction of the courts of this state under section 302 of the civil practice law and rules.

(5) Where the defendant is a foreign corporation doing business or authorized to do business in this state.

(c) Paragraph (b) does not apply to a corporation which was formed under the laws of the United States and which maintains an office in this state.